

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance. The present amendment is being made to facilitate prosecution of the application.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-11 are currently pending. Claim 11 is hereby added. Claims 1, 4, 9 and 11 are independent and are hereby amended. No new matter has been introduced. Support for this amendment is provided throughout the Specification as originally filed.

Changes to the claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. REJECTIONS UNDER 35 U.S.C. §102

Claims 1-6, 9 and 10 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 6,701,528 to Arsenault et al. (hereinafter, merely Arsenault). Applicants respectfully traverse this rejection.

Independent claim 1, in its present form, recites, *inter alia*:

“wherein the video information reproducing apparatus detects whether a distributed schedule information announces that the distributed schedule information is altered to include a new program and, in response, records forefront data for the new program to the record means” (emphasis added)

As understood by the Applicants, Arsenault discloses a system in which the user identifies the desired NVOD either directly or indirectly by having a control center identify the desired NVOD using a profile associated with the user. The forefront data of the selected programs are recorded.

In contrast, claim 1 recites, “the video information reproducing apparatus detects whether a distributed schedule information announces that the distributed schedule information is altered to include a new program and, in response, records forefront data for the new program to the record means.” That is, the present system detects a change in the distributed schedule information. That is, the program listing in the distributed schedule information has changed, for example, to include a new program not previously on the distributed schedule information. In response, the present system records the forefront data of the new program added to the program schedule.

The present system does not require alteration of the distributed program schedule by a user or subscriber. Selection of the programs for recording forefront data is accomplished when the apparatus detects a new program in the distributed schedule information, as recited in claim 1. Indeed, in the present system neither the user nor the schedule information distributor selects the programs for NVOD.

For example, by distributed schedule information it is announced that a program of the Near Video On Demand system is altered. The present system detects the altered program schedule, for example, a movie, and the forefront data of the altered program is recorded in advance. Thus, in this example, when the program is altered, recording of the forefront data of the altered program is redone, employing the time information of the program. Thus, at the time of the reproduction request, the connection between the forefront data of the program already is

recorded. The forefront data of the present invention is recorded in response to detecting a change in the program schedule not in response to selection or identification by the user.

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Claim 1 is not anticipated by Arsenault because that reference does not disclose each and every element recited in the claim. In particular, Arsenault does not disclose, “the video information reproducing apparatus detects whether a distributed schedule information announces that a distributed schedule information is altered to include a new program and, in response, records forefront data for the new program to the record means” as recited in the claim.

For reasons similar or somewhat similar to those described above with regard to independent claim 1, independent claims 4, 9 and 11 are also believed to be patentable.

III. REJECTIONS UNDER 35 U.S.C. §103(a)

Claims 7 and 8 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Arsenault in view of Examiner’s Office Notice. Applicants respectfully traverse this rejection because:

1. claims 7 and 8 depend from claim 4, which is patentable over Arsenault for at least the reasons discussed above; and
2. the Applicants challenge the factual assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge.

From the MPEP 2144.03(E): “Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the

examiner's conclusion should be judiciously applied. Furthermore, as noted by the court in *Ahlert*, any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. *See, for example, In re Zurko*, 258 F.3d 1379, 1386; *In re Ahlert*, 424 F.2d 1088, 1092.

The Applicants contend that it is not of notorious character to utilize different areas of a hard disk in a "Video reproducing apparatus" as though they were separate hard disks as asserted in the Office Action. From the MPEP 2144.03, "[a]s noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute." (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961))."

Further, claim 7 actually recites not only that the record medium comprises a hard disk but also recites, "the forefront data is recorded on a predetermined area of the hard disk so that the forefront data recorded in the predetermined area and data following the forefront data are seamlessly reproduced from the hard disk at the time of reproduction."

Applicants contend this can not be construed to read on merely utilizing "separate area of a hard disk for different purposes as though they were separate hard disks" as asserted in the Office Action.

The recited feature can not be considered capable of such "instant and unquestionable demonstration as to defy dispute." This feature is neither "basic knowledge" nor "common sense." *In re Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002) ("Deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or

‘common sense.’”). Applicants contend that claim 7 recites a substantive feature that can not be overcome with Official Notice.

IV. DEPENDENT CLAIMS

The other claims are dependent from one of the claims discussed above and are therefore believed patentable for at least the same reasons. Because each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

CONCLUSION

Claims 1-11 are in condition for allowance. In the event the Examiner disagrees with any of statements appearing above with respect to the disclosure in the cited reference, or references, it is respectfully requested that the Examiner specifically indicate those portions of the reference, or references, providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,

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A handwritten signature in black ink, appearing to be 'P. A. Levy', written over a horizontal line.

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